IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4272 of 2001

with

CIVIL APPLICATION NO.6815 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REVABHAI NATHABHAI MAKWANA

Versus

RAMANBHAI KACHARABHAI PANCHAL

Appearance:

1. First Appeal No. 4272 of 2001

SANJAY R PATEL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-2

MS LILU K BHAYA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 14/10/2003

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this appeal under Section 173 of the Motor Vehicles Act,1988 ("Act" for short), has challenged the order dated April 9, 2001, passed by the Motor Accident Claims Tribunal, (Main) Sabarkantha at Himatnagar on an application (Exh.4) under Section 140 of the Act in M.A.C.P. No.1709 of 1999 by which order the Tribunal rejected the application filed by the appellant for interim compensation under "No fault liability ".

2. Heard learned counsel for the parties.

3. The award under Section 140 is in the nature of an interim award which is subject to adjustment against the final award, which may be passed in the main claim petition being M.A.C.P. No.1709 of 1999, pending before the Motor Accident Claims Tribunal (Main), Sabarkantha at Himatnagar. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Company Limited Vs. Hansrajbhai V. Kodala, reported in 2001(4) JT 477.

4. As a result of the foregoing discussion, the appeal is allowed with no order as to costs. The respondents shall deposit Rs.25,000/- along with interest at the rate of 9 % per annum from the date of the application till realization, in the Tribunal, on the basis of 'no fault liability' as provided under Section 140 of the Act within four weeks from today.

5. The appellant (original claimant) shall, however, file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

6. On the said undertaking being filed, 30% of the amount awarded shall be permitted to be withdrawn by the appellant (original claimant) on his furnishing security to the satisfaction of the Tribunal. The rest of the amount shall be deposited in a cumulative Fixed Deposit in any nationalised bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

7. In view of the order passed in the First Appeal,

Civil Application No.6815 of 2003 filed by the applicant-original claimant to direct the opponents to make payment of Rs.25,000/- would not survive and is disposed of accordingly.

(M.H.Kadri, J.)

*mithabhai